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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 120326218-2180-01]

RIN 0694-AF56

Revisions to the Export Administration Regulations (EAR): Articles the President Determines No Longer Warrant Control under the U.S. Munitions List that are Related to Launch Vehicles, Missiles, Rockets, and Military Explosive Devices.

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant control under the United States Munitions List (USML) Category IV would be controlled on the Commerce Control List (CCL). These articles, which are related to launch

vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices enumerated in USML Category IV, would be controlled under new Export Control Classification Numbers (ECCNs) 0A604, 0B604, 0D604, 0E604, 9A604, 9B604, 9D604, and 9E604 on the CCL. In addition, this proposed rule would amend ECCNs 0D001, 0E001, 9B115, 9B116, 9D001, 9D002, 9D003, 9D104, 9E001, 9E002, 9E101, and 9E102 to make clarifications and conforming changes based on the proposed addition of the aforementioned 0x604 and 9x604 ECCNs to the CCL and proposed amendments by the Department of State, Directorate of Defense Trade Controls, to the list of articles controlled by USML Category IV.

This is one in a planned series of proposed rules describing how various types of articles that the President determines no longer warrant control on the USML, as part of the Administration's Export Control Reform Initiative, would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR).

This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category IV. The citations, herein, to USML Category IV reflect the proposed amendments contained in the State Department's rule. The revisions proposed in this rule are part of Commerce's retrospective review plan under EO 13563 completed in August 2011. Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-restrospective-analysis-existing-rules>.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2013-0003.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AF56 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF56.

FOR FURTHER INFORMATION CONTACT: Dennis Krepp, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-1309, E-mail: Dennis.Krepp@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (hereinafter the "July 15 (framework) rule") that set forth a framework for how articles that the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. § 2778(f)), would no longer warrant control on the United States Munitions List (USML), would be controlled on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). On November 7, 2011, BIS published a rule (76 FR 68675) (hereinafter the "November 7 (aircraft) rule") proposing several changes to the framework initially proposed in the July 15 (framework) rule. On June 19, 2012, BIS published a rule (77 FR 36409) (hereinafter the "June 19 (specially designed) rule") proposing revisions to the definition of "specially designed" in order to provide, to the extent possible, a common definition of the term for use in both the EAR (e.g., in the CCL) and the International Traffic in Arms Regulations (ITAR). Most recently, on June 21, 2012, BIS published a rule (77 FR 37524) (hereinafter the "June 21 (transition) rule") proposing how the EAR would be amended to address the transition of control over items the President determines no longer warrant control on the USML.

Following the structure of the July 15 (framework) rule and the November 7 (aircraft) rule, this proposed rule describes BIS's proposal for controlling under the EAR and its CCL some articles related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, other military explosive devices, and related articles, which currently are controlled under USML Category IV in the ITAR. The changes proposed in this rule and the State Department's companion rule to Category IV of the USML are based on a review of this USML Category by the Defense

Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review focused on identifying the types of articles that are now controlled by USML Category IV that are either: (i) inherently military and otherwise warrant control on the USML or (ii) of a type common to non-military applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and almost exclusively available from the United States. If an article satisfies either or both of these criteria, the article remains on the USML. If an article does not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications, then it is identified in one of the new ECCNs proposed in this rule. The license requirements and other EAR-specific controls for such items, as described in this proposed rule, would, when considered in the context of the other proposed amendments to the USML and the CCL, enhance national security by: (i) improving U.S. military interoperability with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign companies to design out and avoid U.S.-origin content and services; and (iii) allowing U.S. export control officials to focus government resources on transactions of more concern.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. § 2778(f)(1).

In the July 15 (framework) rule, BIS proposed creating a series of new ECCNs to control articles that would be moved from the USML to the CCL or items listed on the Wassenaar Arrangement Munitions List (WAML) that are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the “600 series” ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the “600 series,” the third character is the number 6. With few exceptions, the final two characters identify the WAML Category that covers items that are the same or similar to items in a particular “600 series” ECCN.

In accordance with the format described above, this proposed rule would create four new “600 series” ECCNs in CCL Category 0 and four new “600 series” ECCNs in CCL Category 9. In addition, this proposed rule would amend ECCNs 0D001, 0E001, 9B115, 9B116, 9D001, 9D002, 9D003, 9D104, 9E001, 9E002, 9E101, and 9E102 to make clarifications and conforming changes based on the proposed addition of the new 0x604 and 9x604 ECCNs to the CCL and proposed amendments by the State Department to the list of articles controlled by USML Category IV.

BIS will publish additional *Federal Register* notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish,

concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the “USML” under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR’s USML to the EAR’s CCL, for purposes of export controls, does not affect the list of defense articles that are controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

The revisions proposed in this rule are part of Commerce’s retrospective plan under EO 13563 completed in August 2011. Commerce’s full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

Detailed Description of Changes Proposed by this Rule

This proposed rule would create four new “600 series” ECCNs in CCL Category 0 (ECCNs 0A604, 0B604, 0D604, and 0E604) and four new “600 series” ECCNs in CCL Category 9 (ECCNs 9A604, 9B604, 9D604, and 9E604) that would clarify the EAR controls that apply to certain items the President determines no longer warrant control under the USML that are related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices in USML Category IV. Terms such as “part” and “component” and “accessories” and “attachments” are applied in the same manner in this rule as those terms were defined or modified in the July 15 (framework) rule and the June 19 (specially designed) rule, respectively.

New ECCN 0A604: Commodities related to military explosive devices and charges.

In new ECCN 0A604, paragraph .a would control demolition blocks and detonators designed, modified, or adapted therefor. Paragraph .b of ECCN 0A604 would control military explosive excavating devices. A note to 0A604.a and .b would indicate that this new ECCN would not control the detonators and other items described in ECCN 1A007 or ECCN 3A232. Paragraph .c of ECCN 0A604 would control smoke hand grenades and stun hand grenades (e.g., “flashbangs”) not described in ECCN 1A984. Paragraphs .d through .w of ECCN 0A604 would be reserved for possible future use. Paragraph .x of ECCN 0A604 would control “parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity in paragraphs .a through .c of ECCN 0A604, or a defense article in USML Category IV, and not specified elsewhere on the CCL or the USML. Two notes to paragraph .x would indicate that:

(1) forgings, castings, and other unfinished products are controlled by paragraph .x if they have reached a stage in manufacturing where they are clearly identifiable, by material composition, geometry, or function, as commodities specified in paragraph .x; and (2) “parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

New ECCN 0B604: Test, inspection, and production “equipment” and related commodities “specially designed” for commodities in ECCN 0A604 or related defense articles in USML Category IV.

In new ECCN 0B604, paragraph .a would control test, inspection, and other production “equipment” that is “specially designed” for the “production” or “development” of commodities in ECCN 0A604, or related defense articles controlled under USML Category IV, and not specified elsewhere on the CCL or the USML. Paragraphs .b through .w would be reserved for possible future use. Paragraph .x of ECCN 0B604 would control “parts,” “components,” “accessories,” and attachments” that are “specially designed” for a commodity subject to control in paragraph .a of ECCN 0B604.

New ECCN 0D604: “Software” “specially designed” for commodities controlled by ECCN 0A604 or 0B604.

ECCN 0D604.a would control “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 0A604 or ECCN 0B604. Paragraph .b of ECCN 0D604 would be reserved for future use.

New ECCN 0E604: “Technology” “required” for items controlled by ECCN 0A604, 0B604, or 0D604.

ECCN 0E604.a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A604 or 0B604, or “software” controlled by ECCN 0D604. Paragraph .b of ECCN 0E604 would be reserved for future use.

New ECCN 9A604: Commodities related to launch vehicles, missiles, rockets, torpedoes, bombs, and mines.

In new ECCN 9A604, paragraph .a would control thermal batteries “specially designed” for the systems described in USML Category IV that are capable of a range equal to or greater than 300 km. Paragraph .b of ECCN 9A604 would control thermal batteries, except for thermal batteries controlled by ECCN 9A604.a, that are “specially designed” for the systems described in USML Category IV. Paragraph .c of ECCN 9A604 would control “components” “specially designed” for ramjet, scramjet, pulse jet, or combined cycle engines described in USML Category IV, including devices to regulate combustion in such commodities. Paragraph .d of ECCN 9A604 would control components “specially designed” for hybrid rocket motors

described in USML Category IV that are usable in rockets, missiles, or unmanned aerial vehicles capable of a range equal to or greater than 300 km. Paragraph .e of ECCN 9A604 would control “components” “specially designed” for pressure gain combustion-based propulsion systems controlled under USML Category IV. Paragraphs .f through .w of ECCN 9A604 would be reserved for possible future use. Paragraph .x of ECCN 9A604 would control “parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity in paragraphs .a through .d of ECCN 9A604, or a defense article in USML Category IV, and not specified elsewhere on the CCL or the USML. Two notes to paragraph .x would indicate that: (1) forgings, castings, and other unfinished products are controlled by paragraph .x if they have reached a stage in manufacturing where they are clearly identifiable, by material composition, geometry, or function, as commodities specified in paragraph .x; and (2) “parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

New ECCN 9B604: Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities in ECCN 9A604 or related defense articles in USML Category IV.

In new ECCN 9B604, paragraph .a would control “production facilities” “specially designed” for items that are controlled by USML Category IV(a)(1) or (a)(2). Paragraph .b of ECCN 9B604 would control test, calibration, and alignment equipment “specially designed” for items that are controlled by USML Category IV(h)(28). Paragraph .c of ECCN 9B604 would control test, inspection, and other production “equipment” that is “specially designed” for the “production” or

“development” of commodities described in ECCN 9A604, or related defense articles enumerated in USML Category IV, and not specified elsewhere on the CCL or the USML. Paragraph .d of ECCN 9B604 would control “specially designed” “production facilities” or production “equipment” for systems, sub-systems, and “components” controlled by USML Category IV(d)(1), (d)(7), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), (h)(26), or (h)(28). Paragraphs .e through .w would be reserved for possible future use. Paragraph .x of ECCN 9B604 would control “parts,” “components,” “accessories,” and “attachments” “specially designed” for a commodity subject to control in paragraph .a or .b of ECCN 9B604.

New ECCN 9D604: “Software” “specially designed” for commodities controlled by ECCN 9A604 or 9B604.

ECCN 9D604.a would control “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A604 or ECCN 9B604. Paragraph .b of ECCN 9D604 would be reserved for future use.

New ECCN 9E604: “Technology” “required” for commodities controlled by ECCN 9A604 or 9B604, or “software” controlled by ECCN 9D604.

ECCN 9E604.a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or

“software” controlled by ECCN 9A604, 9B604, or 9D604. Paragraph .b of ECCN 9E604 would be reserved for future use.

Applicable controls for new “600 series” ECCNs.

All items in the 0x604 and 9x604 ECCNs, as proposed in this rule, would be subject to national security (NS Column 1) and regional stability (RS Column 1) controls, as well as antiterrorism (AT Column 1) controls.

In addition, missile technology (MT Column 1) controls would apply to items described in: ECCN 9A604.a, .c, or .d; ECCN 9B604.a or .b or 9B604.d (for “specially designed” “production facilities” or production “equipment” for defense articles identified as MTCR Annex items in USML Category IV(d)(1), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), or (h)(26)); “software” described in ECCN 9D604.a for commodities controlled for MT reasons in ECCN 9A604 or 9B604; and “technology” described in ECCN 9E604.a for commodities and “software” controlled for MT reasons in ECCNs 9A604, 9B604, or 9D604.

Conforming amendments to ECCNs 0D001, 0E001, 9B115, 9B116, 9D001, 9D002, 9D003, 9D104, 9E001, 9E002, 9E101, and 9E102.

This proposed rule would amend ECCNs 0D001, 0E001, 9B115, 9B116, 9D001, 9D002, 9D003, 9D104, 9E001, 9E002, 9E101, and 9E102 to make clarifications and conforming changes based on both the addition of new “600 series” ECCNs to CCL Categories 0 and 9, as proposed in this

rule, and the amendments to the list of defense articles controlled by USML Category IV that are contained in a proposed rule from the Department of State, Directorate of Defense Trade Controls (DDTC), which is being published in conjunction with this proposed rule from BIS.

First, this proposed rule would amend the headings of ECCNs 0D001 and 0E001 to exclude “software” and “technology” for items in proposed new ECCN 0B604 from control under ECCNs 0D001 and 0E001, because such “software” and “technology” would be controlled under proposed new ECCNs 0D604 and 0E604, respectively. In addition, the headings of ECCNs 9D001, 9D002, 9D003, 9E001, and 9E002 would be amended to exclude “software” and “technology” for items in proposed new ECCN 9B604 from control under these ECCNs, because such “software” and “technology” would be controlled under proposed new ECCNs 9D604 and 9E604, respectively. Furthermore, ECCNs 0B601, 0B602, 0B603, 0B606, 0B614, 0B617, 0C617, and 9B610, which have already been published in proposed form by BIS as part of the Administration’s Export Control Reform Initiative, also would be excluded from the respective CCL Category 0 and 9 “software” and “technology” ECCNs indicated above.

Second, this proposed rule would amend ECCNs 9D001, 9D002, 9D003, 9D104, 9E001, 9E002, 9E101, and 9E102 by removing from the headings of these ECCNs all references to the CCL Category 9 placeholder ECCNs that describe only items subject to the export licensing jurisdiction of DDTC. Furthermore, this proposed rule would amend the Related Controls paragraphs of the ECCNs indicated above to identify the items described in the placeholder ECCNs as subject to the export licensing jurisdiction of DDTC.

Third, this proposed rule would amend ECCNs 9B115 and 9B116 by removing from the headings of these ECCNs all references to the CCL Category 9 placeholder ECCNs that describe only items subject to the export licensing authority of DDTC. These placeholder references would be replaced with references to the appropriate USML Category IV controls described in the State Department's USML Category IV proposed rule, which is being published in conjunction with this BIS proposed rule. Specific USML categories would be referenced in the headings of ECCNs 9B115 and 9B116, because these ECCNs control "specially designed" "production equipment" and "specially designed" "production facilities," respectively, for certain USML Category IV defense articles, as well as certain CCL Category 9 commodities.

These proposed conforming changes and clarifications also would eliminate perceived discrepancies in the current text of certain CCL Category 9 "software" and "technology" ECCNs. For example, the heading of ECCN 9E102 currently includes "technology" for the "use" of space launch vehicles described in ECCN 9A004, while the Related Controls paragraph of ECCN 9E102 indicates that such "technology" would be subject to the export licensing jurisdiction of DDTC. This proposed rule would amend the heading of ECCN 9E102 to include "technology" for commodities described in ECCN 9A004 (except for items that are subject to the ITAR, see 22 CFR part 121) and also amend the Related Controls paragraph in ECCN 9E102 to indicate that "technology" for ECCN 9A004 (except for items that are subject to the EAR) is subject to the export licensing jurisdiction of DDTC.

This proposed rule also would correct an error in the heading of ECCN 9E101, which currently indicates that this ECCN controls "development," "production," and "use" "technology. In fact,

such “use” “technology” is controlled under ECCN 9E102. Therefore, this proposed rule would amend the heading of ECCN 9E101 to remove the reference to “use” “technology.”

Furthermore, this proposed rule would amend the MT controls paragraphs in ECCNs 9E001 and 9E002 to indicate that, in addition to the items already identified in these paragraphs, MT controls apply to “technology” for equipment controlled by 9B115. However, the MT controls paragraph in 9E002 would no longer reference 9B117, because “production” “technology” for 9B117 would not be controlled under ECCN 9E002, as indicated in the ECCN heading.

Effects of this proposed rule

BIS believes that the principal effect of this rule, when considered in the context of the other similar proposed rules being published as part of the Export Control Reform Initiative, will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the USML. This greater flexibility would be in the form of: application of the EAR’s *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions “Servicing and Replacement of Parts and Equipment” (RPL) and “Strategic Trade Authorization” (STA); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De minimis.

The June 21 (transition) rule would impose certain unique *de minimis* requirements on items controlled under the new “600 series” ECCNs. These requirements reflect, in part, further interagency deliberation, as well as a review of the comments that BIS received on the *de minimis* requirements in the July 15 (framework) rule. Section 734.3 of the EAR provides, *inter alia*, that, under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a “*de minimis*” percentage of controlled U.S. origin content. Section 734.4 of the EAR indicates that the *de minimis* percentage may be either 10 percent or 25 percent, based on the destination. If the June 21 (transition) rule’s proposal to amend Section 734.4 of the EAR is adopted, the new ECCNs 0A604, 0B604, 0D604, 0E604, 9A604, 9B604, 9D604, and 9E604 proposed in this rule would be subject to the *de minimis* provisions set forth in the June 21 (transition) rule. Under the proposed amendment to Section 734.4 of the EAR, there would be no eligibility for *de minimis* treatment for a foreign-made item that incorporates U.S.-origin “600 series” items when the foreign-made item is destined for a country subject to a U.S. arms embargo (i.e., Afghanistan, Belarus, Burma, China, Cote d’Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe). This list of countries differs from the one contained in the June 21 (transition) rule in that Yemen would not be included, consistent with the State Department’s July 3, 2012, amendment to Section 126.1 of the ITAR (see 77 FR 39392). For destinations that are not subject to a U.S. arms embargo, a foreign-made item that incorporates U.S.-origin “600 series” items would be eligible for *de minimis* treatment at the 25 percent level

(i.e., when the value of its U.S.-origin controlled content does not exceed 25 percent of foreign-made item's value). In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (i.e., USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors).

Use of license exceptions.

The July 15 (framework) rule and the June 21 (transition) rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new “600 series” ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make “600 series” items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception TMP under § 740.9(a)(12) or License Exception BAG under § 740.14(b)(2), for exports to Afghanistan and Iraq, and by License Exception GOV under § 740.11(b)(2)(ii). In addition, the use of License Exception GOV for “600 series” commodities would be limited to situations in which the United States Government is the consignee and end-user or to situations in which the consignee or end-user is the government of a country listed in § 740.20(c)(1).

This rule proposes limited License Exception STA availability for the proposed new 0x604 and 9x604 ECCNs. None of these new ECCNs would be eligible for the STA “controls of lesser sensitivity” described in § 740.20(c)(2) of the EAR. Instead, STA eligibility for items controlled

under proposed new ECCN 0A604, 0B604, 0D604, 0E604, 9A604, 9B604, 9D604, or 9E604 would be limited to the destinations listed in § 740.20(c)(1) of the EAR. In addition, License Exception STA would not be available for items controlled for MT reasons under proposed new ECCN 9A604, 9B604, 9D604, or 9E604.

Consistent with the July 15 (framework) rule: (i) the use of License Exception STA for “end items” in “600 series” ECCNs would be limited to those “end items” for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved; and (ii) “end items” must be for ultimate end use by a foreign government agency of a type specified in the July 15 (framework) rule. Under this proposed rule, otherwise eligible commodities controlled under proposed ECCN 0A604, 0B604, 9A604, or 9B604 would not be subject to the STA eligibility request and determination requirements described in § 740.20(g) of the EAR that apply to “end items” controlled under “600 series” ECCNs.

Furthermore, the July 15 (framework) rule would limit exports of “600 series” “parts,” “components,” “accessories,” and “attachments” under License Exception STA for ultimate end use by the same set of end users.

Items controlled under proposed ECCN 0B604 or 9B604 (except for 9B604.a, .b, or .d items, controlled for MT reasons) also would be eligible for License Exception LVS (limited value shipments) up to a value of \$1,500, TMP (temporary exports), and RPL (servicing and replacement parts). License Exceptions TMP and RPL also would be available for items

controlled under new ECCN 0A604 or 9A604 (except for 9A604.a, .c, or .d items, which are controlled for MT reasons and excluded from license exception eligibility).

BIS believes that, even with the restrictions proposed by the July 15 (framework) rule, the November 7 (aircraft) rule, and the June 21 (transition) rule on the use of license exceptions for “600 series” items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 0A604, 0B604, 0D604, 0E604, 9A604, 9B604, 9D604, or 9E604.

Alignment with the Wassenaar Arrangement Munitions List.

Since the beginning of the Export Control Reform Initiative, the Administration has stated that the reforms will be consistent with the United States’ obligations to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. In this rule, proposed ECCNs 0A604 and 9A604 would implement, to the extent possible, the controls in WAML Category 4 for commodities related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices and charges, and related equipment and accessories, and specially designed components therefor; proposed ECCNs 0B604 and 9B604 would implement, to the extent possible, the controls in WAML Category 18 for related production equipment; proposed ECCNs 0D604 and 9D604 would implement, to the extent possible, the controls in WAML Category 21 for related

software; and proposed ECCNs 0E604 and 9E604 would implement, to the extent possible, the controls in WAML Category 22 for related technology.

Other effects.

Pursuant to the framework identified in the July 15 (framework) rule, commodities in ECCN 0A604 or 9A604 related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices and charges; related test, inspection and production equipment classified under ECCN 0B604 or 9B604; related “software” classified under ECCN 0D604 or 9D604; and related “technology” classified under ECCN 0E604 or 9E604 would be subject to the licensing policies that apply to items controlled for NS reasons, as described in § 742.4(b)(1) – specifically, NS Column 1 controls. In addition, these same items would be subject to the regional stability licensing policies set forth in § 742.6(a)(1) – specifically, RS Column 1. Furthermore, items described in ECCN 9A604.a, .c, or .d; related test, inspection and production equipment described in ECCN 9B604.a; “software” described in ECCN 9D604.a, for commodities controlled for MT reasons in ECCN 9A604 or 9B604; and “technology” described in ECCN 9E604.a, for commodities and “software” controlled for MT reasons in ECCNs 9A604, 9B604, or 9D604, would be subject to the missile technology licensing policies set forth in § 742.5(a)(1) – specifically, MT Column 1 controls.

The July 15 (framework) rule would amend § 742.4 to apply a general policy of denial to “600 series” items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for NS reasons under this proposed rule. The November 7

(aircraft) rule would expand that general policy of denial to include “600 series” items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1) – specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any “600 series” items that are controlled for MT and RS reasons, but not for NS reasons (as would be the case for certain items affected by the November 7 (aircraft) rule).

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal e-mails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements.

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the July 15 (framework) rule (76 FR 41958), BIS believes that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR, as part of the Administration's Export Control Reform Initiative, would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694-0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Items controlled under proposed ECCN 0A604, 0B604, 0D604, or 0E604, and items controlled under proposed ECCN 9A604, 9B604, 9D604, or 9E604 that are not controlled for MT reasons, would be eligible for certain parts of STA. In addition, eligible commodities controlled under proposed ECCN 0A604, 0B604, 9A604, or 9B604 would not be subject to the STA eligibility request requirements described in § 740.20(g) of the EAR. As stated in the July 15 (framework) rule, BIS believes that the increased use of License Exception STA, resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative, would increase the burden associated with control number 0694-0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each). Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single

consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on items related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices, including related parts, components, production equipment, software, and technology. The reduction in burden hours would particularly impact exporters of parts and components that would no longer be subject to the ITAR. By contrast, most U.S. and foreign end items that are related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices would continue to be subject to the ITAR. With few exceptions, the ITAR currently exempts from license requirements only exports to Canada, and, as a result, most exports to integrators of U.S. Government equipment and most exports of routine maintenance parts and components for NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low-level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 0E604 or 9E604 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, i.e., Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

Number of Small Entities

BIS does not collect data on the size of entities that apply for and are issued export licenses.

Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) will be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML will become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In addition, some items currently on the CCL will move from existing ECCNs to the new "600 series" ECCNs.

This rule addresses certain equipment, and "software" and "technology" therefor, that are related to launch vehicles, missiles, rockets, torpedoes, bombs, mines, and other military explosive devices currently enumerated in USML Category IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines). Most of this equipment would

remain on the USML. However, parts and components for such equipment, which are more likely to be produced by small businesses than are complete systems, would in many cases become subject to the EAR, unless expressly controlled on the USML (e.g., items enumerated in ECCN 0A604.x or 9A604.x). In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category IV items would reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements; (ii) greater availability of license exceptions; (iii) simpler license application procedures; and (iv) reduced (or eliminated) registration fees.

Moreover, parts and components that are controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin parts and components.

Many exports and reexports of the Category IV articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to U.S. Government agencies, parts and components being exported for use as replacement parts, temporary exports, limited value exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would

need. License exceptions under the EAR would allow suppliers to send routine replacement parts and low-level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category IV article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way to determine whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under

the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at \$2,250 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increase to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category IV items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated.

De minimis treatment under the EAR would become available for all items that this rule proposes to transfer from the USML to the CCL. Items subject to the ITAR will remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign-made product. However, foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 25 percent, unless the foreign-made item is destined for a country subject to a U.S. arms embargo in which case there would be no eligibility for *de minimis* treatment. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in

final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required, and none has been prepared.

List of Subjects

15 CFR Part 774

Exports, Reporting and recordkeeping requirements

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730-774) are proposed to be amended as follows:

15 CFR PART 774 – [AMENDED]

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0A604 between ECCNs 0A018 and 0A918 to read as follows:

Supplement No. 1 to Part 774 – the Commerce Control List

* * * * *

0A604 Commodities related to military explosive devices and charges.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0A604.

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in \$ value.

Related Controls: (1) Smoke bombs, non-irritant smoke flares, canisters, grenades and charges, and other pyrotechnical articles having both military and commercial applications are controlled by ECCN 1A984. (2) Certain explosive detonator firing sets, electrically driven explosive detonators, and detonators and multipoint initiation systems are controlled by ECCN 1A007 or ECCN 3A232. (3) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

- a. Demolition blocks and detonators designed, modified, or adapted therefor.
- b. Military explosive excavating devices.

Note to 0A604.a and .b: This entry does not control the detonators and other items described in ECCN 1A007 or ECCN 3A232.

c. Smoke hand grenades and stun hand grenades (e.g., “flashbangs”) not controlled by ECCN 1A984.

d. through w. [RESERVED]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .c of this ECCN, or a defense article controlled under USML Category IV, and not specified elsewhere on the CCL or the USML.

Note 1 to 0A604.x: Forgings, castings, and other unfinished products (such as extrusions and machined bodies) that have reached a stage in manufacturing, where they are clearly identifiable (by material composition, geometry, or function) as commodities controlled by ECCN 0A604.x, are controlled by ECCN 0A604.x.

Note 2 to 0A604.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0B604 between ECCNs 0B006 and 0B986 to read as follows:

0B604 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities in ECCN 0A604 or related defense articles in USML Category IV.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0B604.

List of Items Controlled

Unit: \$ value

Related Controls: See ECCN 9B604, which controls test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities in ECCN 9A604 or related defense articles in USML Category IV.

Related Definitions: N/A

Items:

a. Test, inspection, and other production “equipment” that are “specially designed” for the “production” or “development” of commodities controlled by ECCN 0A604, or related defense articles controlled under USML Category IV, and not specified elsewhere in the CCL or the USML.

b. through w. [RESERVED]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraph .a of this ECCN.

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], ECCN 0D001 is amended by revising the heading of the ECCN to read as follows:

0D001 “Software” specially designed or modified for the “development,” “production,” or “use” of items described in ECCN 0A001 or 0A002, 0B (except for ECCNs 0B601, 0B602, 0B603, 0B604, 0B606, 0B614, 0B617, 0B986 and 0B999), or 0C (except for ECCN 0C617).

* * * * *

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0D604 between ECCNs 0D001 and 0D999 to read as follows:

0D604 “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 0A604 or 0B604.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
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NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0D604.

List of Items Controlled

Unit: \$ value

Related Controls: (1) “Software” directly related to articles enumerated in USML Category IV is controlled under USML Category IV(i). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. “Software” “specially designed” for the “development,” “production,” operation or

maintenance of commodities controlled by ECCN 0A604 or 0B604.

b. [RESERVED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], ECCN 0E001 is amended by revising the heading of the ECCN to read as follows:

0E001 “Technology,” according to the Nuclear Technology Note, for the “development”, “production”, or “use” of items described in ECCN 0A001 or 0A002, 0B (except for ECCNs 0B601, 0B602, 0B603, 0B604, 0B606, 0B614, 0B617, 0B986 and 0B999), 0C (except for ECCN 0C617), or ECCN 0D001.

* * * * *

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0--Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], add a new ECCN 0E604 between ECCNs 0E018 and 1E918 to read as follows:

0E604 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by

ECCN 0A604 or 0B604, or “software” controlled by ECCN 0D604.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 0E604.

List of Items Controlled

Unit: N/A

Related Controls: Technical data directly related to articles enumerated in USML

Category IV are controlled under USML Category IV(i).

Related Definitions: N/A

Items:

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 0A604 or 0B604, or “software” controlled by ECCN 0D604.

b. [RESERVED]

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9A604 between ECCNs 9A120 and 9A980 to read as follows:

9A604 Commodities related to launch vehicles, missiles, rockets, torpedoes, bombs, and mines.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to 9A604.a, .c, and .d	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

STA: (1) License Exception STA is not available for items in this ECCN 9A604 that are controlled for MT reasons (see § 740.20(b)(2)(iii) of the EAR). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9A604.

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in \$ value.

Related Controls: (1) Launch vehicles, missiles, rockets, torpedoes, bombs, and mines are subject to the ITAR (See 22 CFR § 121.1, USML Category IV). (2) See ECCN 0A919 for

foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

- a. Thermal batteries “specially designed” for systems controlled under USML Category IV capable of a range equal to or greater than 300 km.
- b. Thermal batteries, except for thermal batteries controlled by 9A604.a, that are “specially designed” for systems controlled under USML Category IV.
- c. “Components” “specially designed” for ramjet, scramjet, pulse jet, or combined cycle engines controlled under USML Category IV, including devices to regulate combustion in such commodities.
- d. “Components” “specially designed” for hybrid rocket motors controlled under USML Category IV usable in rockets, missiles, or unmanned aerial vehicles capable of a range equal to or greater than 300 km.
- e. “Components” “specially designed” for pressure gain combustion-based propulsion systems controlled under USML Category IV.
- f. through w. [RESERVED]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraphs .a through .d of this ECCN, or a defense article controlled under USML Category IV, and not specified elsewhere on the CCL or the USML.

Note 1 to 9A604.x: Forgings, castings, and other unfinished products (such as extrusions and machined bodies) that have reached a stage in manufacturing, where they are clearly identifiable (by material composition, geometry, or function) as commodities controlled by ECCN 9A604.x, are controlled by ECCN 9A604.x.

Note 2 to 9A604.x: “Parts,” “components,” “accessories,” and “attachments” specified in USML Category IV(h) are subject to the controls of that paragraph.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9B115 is amended by revising the heading of the ECCN and by revising the “Related Controls” paragraph in the List of Items Controlled to read as follows:

9B115 “Specially designed” production “equipment” for systems, sub-systems and “components” controlled by ECCN 9A101 or by USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17).

List of Items Controlled

Unit: * * *

Related Controls: (1) Although items described in USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17) are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), the production “equipment” controlled in this entry that is related to these items is subject to the export licensing authority of BIS.

(2) “Specially designed” production “equipment” for systems, sub-systems, and “components” described in USML Category IV(d)(1), (d)(7), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), (h)(26), or (h)(28) are controlled by ECCN 9B604.

Related Definitions: * * *

Items: * * *

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9B116 is amended by revising the heading of the ECCN and by revising the “Related Controls” paragraph in the List of Items Controlled to read as follows:

9B116 “Specially designed” “production facilities” for systems, sub-systems, and “components” controlled by ECCN 9A012 or 9A101 or by USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Although items described in USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17) are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), the “production facilities” controlled in this entry that are related to these items is subject to the export licensing authority of BIS. (2) “Specially designed” “production facilities” for systems, sub-systems, and “components” described in USML Category IV(d)(1), (d)(7), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), (h)(26), or (h)(28) are controlled by ECCN 9B604.

Related Definitions: * * *

Items: * * *

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9B604 between ECCNs 9B117 and 9B990 to read as follows:

9B604 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities in ECCN 9A604 or related defense articles in USML Category IV.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to 9B604.a and .b and to 9B604.d “specially designed” “production facilities” or production “equipment” for defense articles identified as MTCR Annex items in USML Category IV(d)(1), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), or (h)(26)	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: \$1,500

GBS: N/A

CIV: N/A

STA: (1) License Exception STA is not available for items in this ECCN 9B604 that are controlled for MT reasons (see § 740.20(b)(2)(iii) of the EAR). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9B604.

List of Items Controlled

Unit: \$ value.

Related Controls: (1) “Production facilities” for the “production” or “development” of commodities enumerated in ECCN 9A012 or 9A101 or in USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17) are controlled by ECCN 9B116. (2) Test, inspection, and other production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 9A101 or in USML Category IV(d)(2), (d)(3), (d)(4), or (h)(17) are controlled by ECCN 9B115.

Related Definitions: N/A

Items:

- a. “Production facilities” “specially designed” for items that are controlled by USML Category IV(a)(1) or (a)(2).
- b. Test, calibration, and alignment equipment “specially designed” for items that are controlled by USML Category IV(h)(28).

c. Test, inspection, and other production “equipment” that is “specially designed” for the “production” or “development” of commodities described in ECCN 9A604, or defense articles controlled under USML Category IV, and not specified elsewhere on the CCL or the USML.

d. “Specially designed” “production facilities” or production “equipment” for systems, sub-systems, and “components” controlled by USML Category IV(d)(1), (d)(7), (h)(1), (h)(4), (h)(6), (h)(7), (h)(8), (h)(9), (h)(11), (h)(20), (h)(21), (h)(26), or (h)(28).

e. through w. [RESERVED]

x. “Parts,” “components,” “accessories,” and “attachments” that are “specially designed” for a commodity subject to control in paragraph .a or .b of this ECCN.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D001 is amended by revising the ECCN heading, by revising the MT controls paragraph in the License Requirements section, and by revising the Related Controls paragraph in the List of Items Controlled to read as follows:

9D001 “Software” specially designed or modified for the “development” of equipment or “technology” controlled by ECCN 9A001 to 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121), 9A012, 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), 9A106.d. or .e, 9A110, or 9A120, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991), or ECCN 9E003.

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* * *
MT applies to “software” for equipment controlled by 9B116 for MT reasons	MT Column 1
* * *	* * *

License Requirements Notes: * * *

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: “Software” that is “required” for the “development” of items specified in ECCNs 9A004 (except for items that are subject to the EAR), 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A103 to 9A105, 9A106.a, .b, and .c, 9A107 to

9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), and 9A111 to 9A119 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D002 is amended by revising the ECCN heading, by revising the NS controls paragraph in the License Requirements section, and by revising the Related Controls paragraph in the List of Items Controlled to read as follows:

9D002 “Software” specially designed or modified for the “production” of equipment controlled by ECCN 9A001 to 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121), 9A012, 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), 9A106.d or .e, 9A110, or 9A120, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991).

License Requirements

Reason for Control: * * *

Control(s)	Country chart
NS applies to “software” for equipment controlled by 9A001 to 9A003, 9A012, and 9B001 to 9B010.	NS Column 1
* * *	* * *
* * *	* * *

License Requirements Notes: * * *

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: “Software” that is “required” for the “production” of items specified in ECCNs 9A004 (except for items that are subject to the EAR), 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A103 to 9A105, 9A106.a, .b, and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), and 9A111 to 9A119 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D003 is amended by revising the ECCN heading and by revising the Related Controls paragraph in the List of Items Controlled to read as follows:

9D003 “Software” incorporating “technology” specified by ECCN 9E003.h and used in “FADEC Systems” for propulsion systems controlled by ECCN 9A001 to 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121), 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), 9A106.d or .e, or 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 9D103. (2) “Software” “required” for the “use” of equipment specified in ECCNs 9A004 (except for items that are subject to the EAR), 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A103 to 9A105, 9A106.a, .b, and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile

systems and subsystems), and 9A111 to 9A119 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

(3) “Software” “required” for the “use” of “technology” subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls is also subject to the same licensing jurisdiction (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D104 is amended by revising the heading of the ECCN and by revising the Related Controls paragraph in the List of Items Controlled to read as follows:

9D104 “Software” specially designed or modified for the “use” of equipment controlled by ECCN 9A001, 9A012 (for MT controlled items only), 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), or 9A106.d.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: “Software” for commodities specified in ECCNs 9A005 to 9A011,

9A103 to 9A105, 9A101.b (except for items that are subject to the EAR), 9A106.a, .b, and .c, 9A107 to 9A109, 9A111, 9A115 to 9A118 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9D604 between ECCNs 9D105 and 9D990 to read as follows:

9D604 “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A604 or 9B604.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to “software,” as described in	MT Column 1

paragraph .a of this entry, for commodities controlled for MT reasons in ECCN 9A604 or 9B604	
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9D604.

List of Items Controlled

Unit: \$ value

Related Controls: (1) Software directly related to articles enumerated in USML Category IV is controlled under USML Category IV(i). (2) See also ECCNs 9D101 and 9D104 for controls on “software” for the “use” of missiles and related commodities. (3) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content.

Related Definitions: N/A

Items:

a. “Software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCN 9A604 or ECCN 9B604.

b. [RESERVED]

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E001 is amended by revising the ECCN heading, by revising the MT controls paragraph in the License Requirements section, and by revising the Related Controls paragraphs in the List of Items Controlled to read as follows:

9E001 “Technology” according to the General Technology Note for the “development” of equipment or “software”, controlled by ECCN 9A001.b, 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121), or 9A012, 9B (except for ECCNs 9B604, 9B610, 9B619, 9B990, and 9B991), or ECCN 9D001 to 9D004, 9D101, or 9D104.

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* * *
MT applies to “technology” for equipment controlled by 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B105, 9B106, 9B115, 9B116, 9B117, 9D001, 9D002, 9D003, or 9D004 for MT reasons	MT Column 1
* * *	* * *

License Requirements Notes: * * *

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 9E101 and 1E002.f (for controls on “technology” for the repair of controlled structures, laminates or materials). (2) “Technology” required for the “development” of equipment described in ECCNs 9A004 (except for items that are subject to the EAR), 9A005 to 9A011 or “software” described in ECCNs 9D103 and 9D105 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade

Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E002 is amended by revising the ECCN heading, by revising the MT controls paragraph in the License Requirements section, and by revising the Related Controls paragraphs in the List of Items Controlled to read as follows:

9E002 “Technology” according to the General Technology Note for the “production” of “equipment” controlled by ECCN 9A001.b, 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121) or 9B (except for ECCNs 9B117, 9B604, 9B610, 9B619, 9B990, and 9B991).

License Requirements

Reason for Control: * * *

Control(s)	Country chart
* * *	* * *
MT applies to “technology” for equipment	MT Column 1

controlled by 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B105, 9B106, 9B115, or 9B116 for MT reasons	
* * *	* * *

License Requirements Notes: * * *

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 9E102. (2) See also 1E002.f for “technology” for the repair of controlled structures, laminates or materials. (3) “Technology” that is required for the “production” of equipment described in ECCNs 9A004 (except for items that are subject to the EAR) or 9A005 to 9A011 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E101 is amended by revising the heading of the ECCN and by revising the “Related Controls” paragraph in the List of Items Controlled to read as follows:

9E101 “Technology” according to the General Technology Note for the “development” or “production” of commodities or “software” controlled by ECCN 9A012, 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), 9A106.d or .e, 9A110 (for items that are “specially designed” for non-military unmanned air vehicles controlled by 9A012), 9C110, 9D101, or 9D104.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: “Technology” that is required for items specified in ECCNs 9A101.b (except for items that are subject to the EAR), 9A104, 9A105, 9A106.a, .b, and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), 9A111, 9A115 to 9A119, 9D103, and 9D105 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E102 is amended by revising the heading of the ECCN and by revising the “Related Controls” paragraph in the List of Items Controlled to read as follows:

9E102 “Technology” according to the General Technology Note for the “use” of commodities or “software” controlled by ECCN 9A004 (except for items in 9A004 that are subject to the ITAR, see 22 CFR part 121), 9A012, 9A101 (except for items in 9A101.b that are subject to the ITAR, see 22 CFR part 121), 9A106.d or .e, 9A110 (for items that are “specially designed” for non-military unmanned air vehicles controlled by 9A012), 9B105, 9B106, 9B115, 9B116, 9D101, or 9D104.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) For the purpose of this entry, “use” “technology” is limited to items controlled for MT and their subsystems. (2) “Technology” for items specified in ECCNs 9A004 (except for items that are subject to the EAR), 9A005 to 9A011, 9A101.b (except for items that are subject to the EAR), 9A104, 9A105, 9A106.a, .b and .c, 9A107 to 9A109, 9A110 (for items that are “specially designed” for use in missile systems and subsystems), 9A111,

9A115 to 9A119, 9D103, and 9D105 is subject to the export licensing authority of the U.S.

Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: * * *

Items: * * *

21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9E604 between ECCNs 9E102 and 9E990 to read as follows:

9E604 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A604 or 9B604, or “software” controlled by ECCN 9D604.

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
MT applies to “technology,” as described in paragraph .a of this entry, for commodities	MT Column 1

and “software” controlled for MT reasons in ECCN 9A604, 9B604 or 9D604	
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this ECCN 9E604.

List of Items Controlled

Unit: \$ value

Related Controls: (1) Technical data directly related to articles enumerated in USML Category IV is controlled under USML Category IV(i). (2) See also ECCNs 9E002, 9E101, and 9E102 for controls on “technology” for the “development,” “production,” and “use” of missiles and related items controlled on the CCL.

Related Definitions: N/A

Items:

- a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCN 9A604 or

9B604, or “software” controlled by ECCN 9D604.

b. [RESERVED]

DATED: January 18, 2013

Kevin J. Wolf

Assistant Secretary

for Export Administration

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